

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

11 KATHY JONES,  
12 Plaintiff,  
13 v.  
14 NANCY A. BERRYHILL, Acting  
Commissioner Of Social  
Security,  
15  
16 Defendant.

Case No. EDCV 17-1138-AS

**MEMORANDUM OPINION**

PROCEEDINGS

20 On June 9, 2017, Plaintiff filed a Complaint seeking review  
21 of the Commissioner's denial of Plaintiff's applications for a  
22 period of disability and disability insurance benefits ("DIB"),  
23 and supplemental security income ("SSI"), respectively, under  
24 Titles II and XVI of the Social Security Act. (Docket Entry No.  
25 1). On December 6, 2017, Defendant filed an Answer and the  
26 Administrative Record ("AR"). (Docket Entry Nos. 18-19). The  
27 parties have consented to proceed before the undersigned United  
28 States Magistrate Judge. (Docket Entry Nos. 14-15). On June 12,

1 2018, the parties filed a Joint Stipulation ("Joint Stip.")  
2 setting forth their respective positions regarding Plaintiff's  
3 claim. (Docket Entry No. 26). The Court has taken this matter  
4 under submission without oral argument. See C.D. Cal. C. R. 7-  
5 15.

## **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

9 On April 24, 2013, Plaintiff, formerly employed as a  
10 babysitter (see AR 50-53, 266), filed an application for DIB  
11 alleging a disability onset date of January 22, 2009. (AR 225-  
12 31). On July 16, 2013, Plaintiff filed an application for SSI  
13 alleging the same onset date. (AR 232-42).<sup>1</sup> Plaintiff's  
14 applications were denied initially on August 15, 2013 (AR 160-  
15 64), and on reconsideration on January 7, 2014. (AR 167-71).

17 On August 28, 2015, Administrative Law Judge Duane D. Young  
18 ("ALJ") heard testimony from Plaintiff, who was represented by  
19 counsel, and vocational expert ("VE") Troy Scott. (See AR 44-  
20 75). On May 2, 2016, the ALJ issued a decision denying  
21 Plaintiff's applications. (See AR 25-37).

23 The ALJ applied the requisite five-step process to evaluate  
24 Plaintiff's case. At step one, the ALJ found that Plaintiff met  
25 the insured status requirements through June 30, 2016, and had

<sup>1</sup> At the administrative hearing, Plaintiff amended the disability onset date to January 1, 2011. (See AR 48,50).

1 not been engaged in substantial gainful activity since her  
2 alleged disability onset date of January 1, 2011. (AR 28).

3

4 At step two, the ALJ found that Plaintiff had the following  
5 severe impairments:

6

7 left knee degenerative joint disease; right knee mild  
8 degenerative joint disease; lumbar spine degenerative  
9 arthritis; bilateral hip early degenerative joint  
10 disease; right shoulder acromioclavicular joint  
11 degenerative changes and tendonitis; left shoulder mild  
12 degenerative joint disease; left hand mild degenerative  
13 joint disease; lumbosacral musculoligamentous strain;  
14 obesity; and diabetes mellitus.

15

16 (AR 29).<sup>2</sup>

17

18 At step three, the ALJ determined that Plaintiff's  
19 impairments did not meet or equal a listing found in 20 C.F.R.  
20 Part 404, Subpart P, Appendix 1. (AR 31-32). Next, the ALJ  
21 found that Plaintiff had the following Residual Functional  
22 Capacity ("RFC")<sup>3</sup>:

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24       <sup>2</sup> The ALJ found that Plaintiff's other impairments of  
25 headaches, depression, and mental problems were not severe. (AR  
29-31).

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27       <sup>3</sup> A Residual Functional Capacity is what a claimant can  
28 still do despite existing exertional and nonexertional  
limitations. See 20 C.F.R §§ 404.1545(a)(1), 416.945(a)(1).

1 [Plaintiff] has the residual functional capacity to  
2 perform a range of light work<sup>4</sup> as defined in 20 C.F.R.  
3 404.1567(b) and 416.967(b) except she can lift and  
4 carry 20 pounds occasionally and 10 pounds frequently;  
5 she can stand and walk for two hours in an eight-hour  
6 work day and sit for six hours in an eight-hour work  
7 day; she cannot climb ladders, ropes or scaffolds; she  
8 can occasionally stoop, kneel, crouch, crawl, balance,  
9 and climb ramps and stairs; she is to avoid  
10 concentrated exposure to extreme cold; and she can no  
11 more than occasionally walk on uneven terrain.

12  
13 (AR 32).

14  
15 At step four, the ALJ determined, based on the VE's  
16 testimony, that Plaintiff is capable of performing her past  
17 relevant work as a babysitter as actually performed, but not as  
18 generally performed, within the meaning of the Social Security  
19 Act. (AR 36-37). Accordingly, the ALJ concluded that Plaintiff  
20 is not disabled. (AR 37).

21  
22 On April 5, 2017, the Appeals Council denied Plaintiff's  
23 request to review the ALJ's decision. (See AR 1-6, 21).  
24 Plaintiff now seeks judicial review of the ALJ's decision, which

25  
26 \_\_\_\_\_  
27 <sup>4</sup> "Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds." 20 C.F.R. §§ 404.1567(b), 416.967(b).  
28

1 stands as the final decision of the Commissioner. See 42 U.S.C.  
2 §§ 405(g), 1383(c).  
3

4 **STANDARD OF REVIEW**  
5

6 This Court reviews the Administration's decision to  
7 determine if it is free of legal error and supported by  
8 substantial evidence. See Brewes v. Comm'r, 682 F.3d 1157, 1161  
9 (9th Cir. 2012). "Substantial evidence" is more than a mere  
10 scintilla, but less than a preponderance. Garrison v. Colvin,  
11 759 F.3d 995, 1009 (9th Cir. 2014). To determine whether  
12 substantial evidence supports a finding, "a court must consider  
13 the record as a whole, weighing both evidence that supports and  
14 evidence that detracts from the [Commissioner's] conclusion."  
15 Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001)  
16 (internal quotation omitted). As a result, "[i]f the evidence  
17 can support either affirming or reversing the ALJ's conclusion,  
18 [a court] may not substitute [its] judgment for that of the ALJ."  
19 Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006).

20  
21 **DISCUSSION**  
22

23 Plaintiff contends that the ALJ failed to include  
24 Plaintiff's mild mental limitations in his assessment of her  
25 RFC.<sup>5</sup> (See Joint Stip. at 4-9). After consideration of the

26 \_\_\_\_\_  
27 <sup>5</sup> Plaintiff does not challenge the ALJ's finding that  
Plaintiff's depression was non-severe. She merely contends that  
the non-severe limitations should have been included in the RFC.  
28

1 record as a whole, the Court finds that the Commissioner's  
2 findings are supported by substantial evidence and are free from  
3 material legal error.<sup>6</sup>

4

5 **A. The ALJ Did Not Err by Declining to Include Plaintiff's Mild**  
6 **Mental Limitations in the RFC**

7

8 The Social Security Regulations require an ALJ to consider  
9 all limitations, whether severe or non-severe, when assessing a  
10 claimant's RFC. See 20 C.F.R. §§ 404.1545(a)(2), 416.945(a)(2)  
11 ("We will consider all of your medically determinable impairments  
12 of which we are aware, including your medically determinable  
13 impairments that are not 'severe' . . . when we assess your  
14 residual functional capacity."). An ALJ errs, therefore, if he  
15 explicitly neglects to consider a non-severe limitation when  
16 assessing the RFC. See Hutton v. Astrue, 491 F. App'x 850, 850-  
17 51 (9th Cir. 2012) (holding that although the ALJ found that  
18 claimant's impairment of PTSD was non-severe because it caused  
19 only "mild mental limitations in the area of concentration,  
20 persistence or pace, and no episodes of decompensation," the ALJ

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22 Plaintiff also conclusorily asserts that the ALJ also erred in  
23 failing to include her mental limitations in the hypothetical to  
24 the VE. (See Joint Stip. at 5). The Court will not consider  
this assertion because Plaintiff failed to discuss it.

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<sup>6</sup> The harmless error rule applies to the review of administrative decisions regarding disability. See McLeod v. Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011); Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (an ALJ's decision will not be reversed for errors that are harmless).

1 still was required to consider the mild limitations in the RFC  
2 analysis); Ball v. Colvin, 2015 WL 2345652, at \*3 (C.D. Cal. May  
3 15, 2015) (distinguishing Hutton because it was based on the  
4 ALJ's "explicit refusal" to consider the claimant's mild mental  
5 limitations caused by PTSD in the RFC). However, while an ALJ  
6 must consider non-severe limitations, an ALJ need not include  
7 them in the RFC if they do not cause more than a minimal  
8 limitation on a claimant's ability to work. See Medlock v.  
9 Colvin, 2016 WL 6137399, at \*5 (C.D. Cal. Oct. 20, 2016)  
10 ("Consideration of "the limiting effects of all impairments" does  
11 not necessarily require the inclusion of every impairment into  
12 the final RFC if the record indicates the non-severe impairment  
13 does not cause a significant limitation in the plaintiff's  
14 ability to work."); Ball, 2015 WL 2345652, at \*3 (reasoning that  
15 mild mental impairments "by definition do not have more than a  
16 minimal limitation on Plaintiff's ability to do basic work  
17 activities . . . which translates in most cases into no  
18 functional limitations," and thus the ALJ was not required to  
19 include them in the RFC).

20

21 Here, the ALJ found, in the "paragraph B" analysis at step  
22 two, that Plaintiff had mild limitations in activities of daily  
23 living, social functioning, and concentration, persistence or  
24 pace. (AR 30). In reaching these findings, the ALJ discussed  
25 the opinions of consultative examining psychiatrist Reynaldo  
26 Abejuela, M.D., and the state agency psychological consultants,  
27 as well as Plaintiff's testimony and other evidence. (AR 31-31).  
28 The ALJ noted, for example, that Plaintiff "reported [to Dr.

1 Abejuela] that she performs personal care tasks, runs errands,  
2 shops, cooks, pays bills, handles the finances, drives, uses  
3 public transportation, and does the household chores." (AR 30;  
4 see AR 579). Plaintiff also reported that "her relationships  
5 with her family, relatives, friends, and neighbors [were] good to  
6 fair to excellent," and she "was not seeing a psychiatrist, a  
7 psychologist or a therapist." (AR 30-31; see AR 579, 581). When  
8 Dr. Abejuela examined Plaintiff on July 20, 2013, he observed  
9 that Plaintiff's thought content, attention, memory, and judgment  
10 were appropriate. (AR 31; see AR 579-80, 582). As the ALJ also  
11 noted, Dr. Abejuela remarked that Plaintiff's "psychiatric  
12 symptoms should dissipate in the next two months because this was  
13 transient and temporary." (AR 31; see AR 583). Based on his  
14 consideration of the record overall, the ALJ concluded that  
15 Plaintiff's "medically determinable impairment of depression does  
16 not cause more than minimal limitation in the [Plaintiff's]  
17 ability to perform basic mental work activities and is therefore  
18 non-severe." (AR 31).

19

20       Although the ALJ did not include any mental limitations in  
21 the RFC assessment, (see AR 32), the ALJ "considered the  
22 functional limitations resulting from all of [Plaintiff's]  
23 medically determinable impairments, including those that are  
24 nonsevere." (AR 31 (citing 20 C.F.R. §§ 404.1545, 416.945)).  
25 Moreover, the ALJ stated that the RFC assessment "reflects the  
26 degree of limitation [the ALJ] found in the 'paragraph B' mental  
27 function analysis." (AR 30). Because the ALJ found that  
28 Plaintiff's mental impairments were non-severe and did not cause

any significant impairments, the ALJ was not required to include them in Plaintiff's RFC. See Ball, 2015 WL 2345652, at \*3 ("As the ALJ found that Plaintiff's mental impairments were minimal, the ALJ was not required to include them in Plaintiff's RFC."); see also Hoopai v. Astrue, 499 F.3d 1071, 1077 (9th Cir. 2007) (explaining that the Ninth Circuit has not "held mild or moderate depression to be a sufficiently severe non-exertional limitation that significantly limits a claimant's ability to do work beyond the exertional limitation."). Thus, having considered the record evidence of Plaintiff's mental limitations in assessing Plaintiff's RFC, the ALJ did not err by declining to include mild mental limitations in the RFC finding.

13

14 **B. Alternatively, Any Error in Failing to Include Plaintiff's**  
15 **Mild Mental Limitations in the RFC Was Harmless**

16

17 Even if the ALJ erred by failing to include Plaintiff's mild  
18 limitations in activities of daily living, social functioning,  
19 and concentration, persistence or pace in the RFC determination,  
20 any error was harmless. An ALJ's error is harmless "when it is  
21 clear from the record . . . that it was 'inconsequential to the  
22 ultimate nondisability determination.'" Tommasetti v. Astrue,  
23 533 F.3d 1035, 1028 (9th Cir. 2008) (citation omitted); see also  
24 Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1162 (9th  
25 Cir. 2008) ("[T]he relevant inquiry in this context is not  
26 whether the ALJ would have made a different decision absent any  
27 error . . . it is whether the ALJ's decision remains legally  
28 valid, despite such error"); Burch v. Barnhart, 400 F.3d 676, 679

1 (9th Cir. 2005) ("A decision of the ALJ will not be reversed for  
2 errors that are harmless").

3

4 Here, it is clear from the record that even if the RFC  
5 included mild mental limitations, this would not have altered the  
6 ALJ's conclusion that Plaintiff is capable of performing her past  
7 relevant work as a babysitter, as she actually performed that  
8 job, and thus is not disabled. Plaintiff testified that her  
9 babysitting job involved "[t]aking [the children] to and from  
10 school, making sure that their homework got done," and  
11 "sometime[s] . . . fix[ing] them something to eat." (AR 53).  
12 When asked if the job was "more of the classic babysitting rather  
13 than like preschool where you're trying to [t]each them some  
14 stuff and everything," Plaintiff agreed. (Id.). Notably, the  
15 responsibilities of this job are largely consistent with the  
16 abilities required to perform Plaintiff's daily activities. As  
17 discussed above, Plaintiff's reported daily activities included  
18 driving, shopping, cooking, paying bills, and doing household  
19 chores. (AR 30, 579). Plaintiff also described her  
20 relationships with family or relatives as "excellent to good,"  
21 and her relationships with friends and neighbors as "excellent to  
22 fair." (Id.). Furthermore, Plaintiff testified at the hearing  
23 that she might still be able to perform her babysitting job with  
24 her current limitations. (AR 65). The ALJ remarked that this  
25 latter testimony supported his finding that Plaintiff could still  
26 perform her past relevant work as she performed it. (AR 34).

27

28

1 Accordingly, even if mild mental limitations had been  
2 included in the RFC, the ALJ would have found Plaintiff not  
3 disabled - a decision that is supported by substantial evidence  
4 in the record. Therefore, any error in the ALJ's failure to  
5 include such limitations in the RFC was harmless.

## **CONCLUSION**

For the foregoing reasons, the decision of the Commissioner  
is AFFIRMED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

14 | Dated: August 15, 2018

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